

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 SP-02 AID-05 EB-07 NSC-05 CIEP-01

TRSE-00 SS-15 STR-04 OMB-01 CEA-01 CIAE-00 COME-00

FRB-03 INR-07 NSAE-00 USIA-06 XMB-02 OPIC-03 LAB-04

SIL-01 L-03 H-02 PA-01 PRS-01 /087 W

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R 121722Z SEP 75

FM AMEMBASSY BONN

TO SECSTATE WASHDC 2840

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PASS TREASURY FOR ASSISTANT SECRETARY HICKMAN AND SYVRUD

E.O. 11652: N/A

TAGS: EFIN, GW

SUBJECT: GERMAN CORPORATE TAX REFORM : DOUBLE
TAXATION ASPECTS

1. THE GERMAN MINISTRY OF FINANCE HAS ASKED THAT WE
OBTAIN CLARIFICATION ON THE FOLLOWING QUESTIONS IN
CONNECTION WITH A STATEMENT ASSISTANT SECRETARY HICKMAN
MADE, ACCORDING TO THE FINANCE MINISTRY, IN THE OECD
FISCAL COMMITTEE LAST JUNE TO THE EFFECT THAT THE US
EXPECTS COUNTRIES WITH A SYSTEM WHICH CREDITS CORPORATE
TAX PAID AGAINST INDIVIDUAL INCOME TAXES TO GIVE
THE FULL TAX CREDIT OR REBATE INVOLVED ALSO TO US

RESIDENTS WITHIN THE FRAMEWORK OF APPLICABLE DOUBLE
TAXATION TREATIES. ACCORDING TO THE FINANCE MINISTRY,
ASSISTANT SECRETARY HICKMAN ALSO INDICATED THAT SUCH
CREDITS SHOULD ALSO APPLY IN THE CASE OF US PARENT
COMPANIES AND SHOULD NOT BE SUBJECT TO ANY SPECIAL
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PROVISIONS REGARDING THE FURTHER DISTRIBUTION OF

DIVIDENDS RECEIVED BY SUCH PARENT COMPANIES FROM
THEIR FOREIGN DAUGHTERS:

(L) DOES THE ABOVE US POSITION APPLY ONLY TO
COUNTRIES GIVING A PARTIAL TAX CREDIT OR ALSO TO
COUNTRIES GRANTING A FULL CREDIT ON CORPORATE TAXES
PAID ON DISTRIBUTED DIVIDENDS SUCH AS CONTEMPLATED
IN THE GERMAN TAX REFORM.

(2) IN WHAT RESPECT, IF ANY, HAS THE US POSITION
OUTLINED BY ASSISTANT SECRETARY HICKMAN CHANGED AS A
RESULT OF THE PROPOSAL BY SECRETARY SIMON OF A US
CORPORATE TAX REFORM WHICH ENVISAGES NO SUCH US TAX
CREDIT FOR REBATE TO FOREIGN RESIDENTS?

(3) WHAT IS THE US POSITION IN REGARD TO WITH-
HOLDING TAXES (SUCH AS THE GERMAN KAPITALERTRAGSSTEUER
WITHHELD FROM DIVIDENDS PAID TO US RESIDENTS WHICH
ARE CREDITED AGAINST GERMAN INDIVIDUAL INCOME TAXES,
IF ANY)?

2. AS INDICATED IN BONN 13538, WE HAVE ALSO TAKEN
THE OPPORTUNITY TO COMPARE WITH THE GERMAN MINISTRY
OF FINANCE EXPERTS THE CALCULATIONS WE MADE ON THE
IMPACT OF THE GERMAN CORPORATE TAX REFORM AND OUTLINED
IN DETAIL IN BONN 03841. THE FINANCE MINISTRY EXPERTS
GENERALLY CONFIRMED THE ACCURACY OF OUR CALCULATIONS
SUBJECT TO THE FOLLOWING COMMENTS: (A) IN THEIR
CALCULATIONS THEY CALCULATE THE INCOME TAX ELEMENT OF
THE GERMAN TRADE TAX TO BE AN AVERAGE OF 15 PERCENT
INSTEAD OF THE 13 PERCENT WE HAVE ASSUMED AND THE
CURRENT GERMAN CORPORATE INCOME TAX AT 52.5 PERCENT
INSTEAD OF THE 52 PERCENT USED IN OUR CALCULATIONS.
(B) THEY FEEL THAT IN THE CASE OF DISTRIBUTED EARNINGS
A FURTHER COMPARISON HAS TO BE MADE IN THE CASE OF

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THE US PARENT WHO CAN EITHER PASS ON THE DISTRIBUTED PROFITS TO ITS INDIVIDUAL SHAREHOLDERS (WHERE IT BECOMES SUBJECT TO US INDIVIDUAL INCOME TAXES IN THE SAME WAY AS EARNINGS DISTRIBUTED TO GERMAN INDIVIDUAL TAXPAYERS BECOME SUBJECT TO THE GERMAN INDIVIDUAL INCOME TAX) OR WHERE THE US PARENT CAN RETAIN THE DIVIDENDS FROM THEIR GERMAN DAUGHTER AND THUS AVOID ANY FURTHER TAXES ON THEM, WHILE THE GERMAN DISTRIBUTED PROFIT WILL BE SUBJECT IN ANY CASE TO AN INDIVIDUAL INCOME TAX. (C) PROVISION SHOULD BE MADE IN THE CALCULATIONS FOR SPECIAL CIRCUMSTANCES WHERE US PARENT COMPANIES CAN AVOID FURTHER US CORPORATE INCOME TAXES ON DIVIDENDS RECEIVED FROM GERMAN DAUGHTERS EITHER BECAUSE THESE DIVIDENDS CAN BE OFFSET AGAINST TAX CREDITS FROM OTHER FOREIGN OPERATIONS OR CAN BE TREATED AS STOCK DIVIDENDS. (D) FINALLY, THE GERMAN OFFICIALS RAISE THE GENERAL PHILOSOPHICAL QUESTION THAT IN ALL APPLICABLE CASES WHERE THE HIGHER TAX ON US DAUGHTERS RESULTS FROM US RATHER THAN FROM GERMAN TAXES THE REMEDY SHOULD LIE IN THE US TAX SYSTEM. WE POINTED OUT THAT WE WERE SIMPLY ATTEMPTING TO CALCULATE THE INCREASED BURDEN ON US DAUGHTER COMPANIES FROM A CHANGE IN TAX LAWS

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AND THAT THESE CHANGES WERE IN THE APPLICABLE GERMAN TAX LAWS.

HILLENBRAND

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